

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF OHIO  
WESTERN DIVISION**

<b>MARK W. MILLER,</b>	:	<b>Case No. 1:12:-CV-242</b>
	:	
<b>Plaintiff,</b>	:	<b>Judge _____</b>
	:	
<b>v.</b>	:	
	:	
<b>FEDERAL ELECTIONS COMMISSION,</b>	:	<b>COMPLAINT FOR DECLARATORY</b>
	:	<b>AND INJUNCTIVE RELIEF</b>
<b>Defendant.</b>	:	

Plaintiff Mark W. Miller, hereby files this Complaint to compel compliance with the Freedom of Information Act ("FOIA"), 5 U.S.C. § 552. As grounds therefor, Mr. Miller alleges as follows:

**PARTIES**

1. Plaintiff Mark W. Miller is a citizen of the State of Ohio and is a resident within this District.
2. Defendant Federal Elections Commission is an agency of the federal government and has possession, custody or control over the records that Plaintiff sought pursuant to FOIA.

**JURISDICTION & VENUE**

3. This Court has jurisdiction pursuant to 5 U.S.C. § 552(a)(4)(B) and 28 U.S.C. § 1331.
4. Venue is proper within this judicial district pursuant to 5 U.S.C. § 552(a)(4)(B), as the Plaintiff resides and is domiciled within this District.

**STATEMENT OF FACTS / CAUSE OF ACTION**

5. In the Congressional election of November 2008, Jean Schmidt (a member of Congress representing Ohio's second congressional district) ran against David Krikorian.

6. Since defeating Mr. Krikorian during the election held in November 2008, Jean Schmidt has been involved in four complaints or lawsuits directly related to the 2008 campaign.

7. In each of these actions, Congresswoman Schmidt has been represented by lawyers provided and paid by the Turkish American Legal Defense Fund (TALDF) or its alter ego of the Turkish Coalition of America (TCA).

8. The TCA is a special interest group which advocates and lobbies in the United States in support of and in order to advance the political interest of the Government of Turkey.

9. As a result of the foregoing legal representation being provided for and on behalf of Congresswoman Schmidt, the TALDF and/or the TCA paid for nearly \$500,000 in legal service for Congresswoman Schmidt in order to engage in a vindictive and retributive vendetta against a former political opponent, *i.e.*, Mr. Krikorian.

10. Following an investigation, the House Ethics Committee concluded that, in accepting legal services which were paid for by the TALDF and/or the TCA, Congresswoman Schmidt received an impermissible gift of nearly \$500,000.

11. As a result of the House Ethics Committee finding Congresswoman Schmidt had accept an impermissible gift of nearly \$500,000, the House Ethics Committee ordered or required Congresswoman Schmidt to, amongst other things, pay from a permissible source the lawyers associated with TALDF and/or the TCA for all legal services they performed for or on behalf of Congresswoman Schmidt.

12. The House Ethics Committee authorized Congresswoman Schmidt to establish a legal expense fund in order to raise funds to pay for the nearly \$500,000 that she received in legal services from the TALDF and/or the TCA.

13. However, the House Ethics Committee ruled that the proceeds of the legal expense fund could not be used to pay expenses or fees associated with one of the four legal proceedings for which the TALDF and/or the TCA had previously provided and paid for legal services for Congresswoman Schmidt – the writing and submission of an *amicus* brief in a federal court litigation.

14. Thus, on or about October 7, 2011, Phil Greenberg, who is the treasurer of the Schmidt for Congress Committee, wrote to the Defendant FEC requesting an advisory opinion from the FEC about using campaign funds to pay the TALDF and/or the TCA for the legal services related to the *amicus* brief and for which the House Ethics Committee mandated to be repaid but not through the legal expense fund.

15. A true and accurate copy of the letter from Mr. Greenburg to the FEC, dated October 7, 2011, is attached hereto as Exhibit A. Said letter was received by the FEC on October 13, 2011.

16. Pursuant to 11 CFR 112.1(f), “[u]pon receipt by the Commission, each request which qualifies as an advisory opinion request (AOR) under 11 CFR 112.1 shall be assigned an AOR number for reference purposes.”

17. Upon receipt of the request for an advisory opinion from Mr. Greenburg, *i.e.*, Exhibit A, the FEC assigned AOR number 2011-20 to the request from Mr. Greenburg.

18. Thus, the request for an advisory opinion from Mr. Greenburg, *i.e.*, Exhibit A, qualified as an advisory opinion request under 11 CFR 112.1.

19. Pursuant to 11 CFR 112.2(a), “[a]dvisory opinion requests which qualify under 11 CFR 112.1 shall be made public at the Commission promptly upon their receipt.”

20. Upon receipt of the request for an advisory opinion from Mr. Greenburg, *i.e.*, Exhibit A, and having assigned it AOR number 2011-20, the FEC caused AOR 2011-20 to be posted publicly

on its website. Specifically, the FEC posted the request for an advisory opinion from Mr. Greenburg, *i.e.*, Exhibit A, on its website on October 18, 2011.

21. Pursuant to 11 CFR 112.3(a), “[a]ny interested person may submit written comments concerning advisory opinion requests made public at the Commission.”

22. Pursuant to 11 CFR 112.3(b), “[t]he written comments shall be submitted within 10 calendar days following the date the request is made public at the Commission. . . . Additional time for submission of written comments may be granted upon written request for an extension by the person who wishes to submit comments or may be granted by the Commission without an extension request.”

23. Pursuant to 11 CFR 112.4(a), “[w]ithin 60 calendar days after receiving an advisory opinion request that qualifies under 11 CFR 112.1, the [FEC] shall issue to the requesting person a written advisory opinion or shall issue a written response stating that the Commission was unable to approve an advisory opinion by the required affirmative vote of 4 members.”

24. Notwithstanding the fact that AOR 2011-20 was received by the FEC over 60 days ago, the FEC has failed to issue a written advisory opinion in response the advisory opinion requested by Mr. Greenburg, *i.e.*, Exhibit A.

25. Notwithstanding the fact that AOR 2011-20 was received by the FEC over 60 days ago, the FEC has failed to issue a written response to the advisory opinion requested by Mr. Greenburg, *i.e.*, Exhibit A, wherein the FEC stated that it was unable to approve an advisory opinion by the required affirmative vote of 4 members of the FEC.

26. Instead, approximately one week after AOR 2011-20 was posted on the website of the FEC, the FEC without explanation removed AOR 2011-20 from its website.

27. Thus, via letter dated November 23, 2011, Plaintiff Mark Miller tendered a FOIA request to the FEC seeking all records of the FEC relating to the request that Mr. Greenberg submitted on behalf of the Schmidt for Congress Committee, *i.e.*, Exhibit A, about using campaign funds to pay for the attorneys which the TALDF or the TCA had previously provided and paid on behalf of Congresswoman Schmidt.

28. A true and accurate copy of the FOIA request from Mr. Miller to the FEC, dated November 23, 2011, is attached hereto as Exhibit B. Said letter was transmitted to the FEC via e-mail on November 13, 2011, and, thus, would have been received by the FEC on that day.

29. Pursuant to 11 CFR 4.7(c), the FEC “shall determine within twenty working days after receipt of a [FOIA] request . . . whether to comply with such request, unless in unusual circumstances the time is extended . . . . In the event the time is extended, the requestor shall be notified of the reasons for the extension and the date on which a determination is expected to be made, but in no case shall the extended time exceed ten working days.”

30. Twenty working days after November 23, 2011, was December 23, 2011.

31. At no time, let alone on or before the expiration of twenty working days after receipt of Mr. Miller’s FOIA request, has the FEC notified Mr. Miller that additional time would be required in order to determine whether the FEC would comply with Mr. Miller’s FOIA request.

32. Pursuant to 11 CFR 4.7(h), “[a]ny person denied access to records by the [FEC] shall be notified immediately giving reasons therefore, and notified of the right of such person to appeal such adverse determination to the Commission.”

33. To date, the FEC has denied Plaintiff access to the records sought pursuant to the Plaintiff's FOIA request but has not provided any reason for the denial or delay in providing such records.

34. Pursuant to 11 CFR 4.8(a), "[a]ny person . . . who has received no response within ten working days . . . after the request has been received by the [FEC], may appeal . . . the failure to respond by requesting the [FEC] to direct that the record be made available."

35. Thus, on January 9, 2012, Mr. Miller submitted an appeal of the failure of the FEC to respond to his FOIA request and requested that the FEC direct that the requested records be made available.

36. Attached hereto as Exhibit C is a true and accurate copy of the appeal letter of Mr. Miller (but without the original request, *i.e.*, Exhibit B, attached thereto).

37. In order to clarify his contact information, Mr. Miller re-submitted, on February 14, 2012, an appeal of the failure of the FEC to respond to his FOIA request and requested that the FEC direct that the requested records be made available.

38. Attached hereto as Exhibit D is a true and accurate copy of the clarifying appeal letter of Mr. Miller (but without the original request, *i.e.*, Exhibit B, or the initial appeal, *i.e.*, Exhibit C, attached thereto).

39. Pursuant to 11 CFR 4.8(f), the FEC "will make a determination with respect to any appeal within twenty days (excluding Saturdays, Sundays and legal holidays) after receipt of the appeal (or within such extended period as is permitted under Sec. 4.7(c) of this part)."

40. Twenty working days after January 9, 2012, was February 7, 2012.

41. At no time has the FEC notified Mr. Miller that additional time would be required in order to process Mr. Miller's appeal of the failure of the FEC to respond to his FOIA request.

42. Mr. Miller has complied with the requirements of the Freedom of Information Act and is entitled to the immediate production of the records sought via his FOIA request.

43. Mr. Miller is entitled to a declaratory judgment declaring that the FEC has failed to comply with its legal obligations and duties under the Freedom of Information Act.

44. Mr. Miller is entitled to the issuance of an injunction compelling the FEC to immediately produce all records response to his FOIA request, together with an award of attorney fees and costs. WHEREFORE, Mr. Miller prays and requests that this Court:

- (i) declare that Defendant's failure to respond to the Plaintiff's FOIA request is unlawful under FOIA;
- (ii) declare that Defendant's failure to respond to the Plaintiff's appeal of the failure of the FEC to respond to his FOIA request is unlawful under FOIA;
- (iii) order and enjoin the Defendant to make the records requested immediately available to Plaintiff without any fee or charge;
- (iv) award Mr. Miller costs and reasonable attorney fees, pursuant to 5 U.S.C. §552(a)(4)(E); and
- (v) grant Plaintiff such other relief to which he may be entitled, in law or in equity.

Respectfully submitted,

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